

46 Am. Jur. 2d Judges § 101

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Judges

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IX. Disqualification to Act in Particular Case

B. Grounds for Disqualification

2. Interests as Grounds for Disqualification

b. Particular Interests as Grounds for Disqualification

(2) Judge as Party or Witness

§ 101. Disqualification of judge who is witness—As material or necessary witness

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  45, 50

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[Disqualification of judge on ground of being a witness in the case, 22 A.L.R.3d 1198](#)

In some jurisdictions, a trial judge who has been, or is to be called, as a witness in a case tried before him or her is disqualified from presiding in the case if he or she is a material or necessary witness in the case.¹ The Code of Judicial Conduct states that a judge should disqualify him- or herself if he or she is likely to be a material witness in the proceeding,² or was a material witness concerning the matter.³ The rule is statutory in some jurisdictions.⁴

A trial judge is not a "material" witness in the case unless his or her testimony is actually material and necessary to the determination of the case.⁵ A judge is not a material witness where there are other available witnesses who can give the same testimony.⁶ A trial judge who is to be called as a character witness on behalf of a criminal defendant is disqualified as being a material witness.⁷

Footnotes

- 1 Stein v. State, 995 So. 2d 329 (Fla. 2008); State v. Talley, 572 So. 2d 230 (La. Ct. App. 1st Cir. 1990); Davis v. State, 598 S.W.2d 582 (Mo. Ct. App. W.D. 1980); Oakes v. Muka, 56 A.D.3d 1057, 868 N.Y.S.2d 796 (3d Dep't 2008); In re Disciplinary Proceedings Against Prosser, 2012 WI 43, 340 Wis. 2d 292, 813 N.W.2d 208 (2012).
- 2 A.B.A. Code of Judicial Conduct, Canon 2, Rule 2:11(A)(2)(d).
- 3 A.B.A. Code of Judicial Conduct, Canon 2, Rule 2:11(A)(6)(c).
- 4 State v. Kelley, 241 La. 224, 128 So. 2d 18 (1961); In re Disciplinary Proceedings Against Prosser, 2012 WI 43, 340 Wis. 2d 292, 813 N.W.2d 208 (2012).
- 5 State ex rel. Ferrera v. Sandler, 152 Fla. 517, 12 So. 2d 298 (1943); People v. Rodriguez, 14 A.D.2d 917, 221 N.Y.S.2d 532 (2d Dep't 1961).
- 6 Bresnahan v. Luby, 160 Colo. 455, 418 P.2d 171, 22 A.L.R.3d 1193 (1966); Com. v. Musto, 348 Pa. 300, 35 A.2d 307 (1944).
In order to disqualify a judge on the basis that he or she might be called as a witness at trial, there must be a showing that the judge will testify as to a material fact about which no other witness might testify. People Against Tax Revenue Mismanagement, Inc. v. Reynolds, 571 So. 2d 493 (Fla. 1st DCA 1990).
- 7 State v. Kelley, 241 La. 224, 128 So. 2d 18 (1961).

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